

**Exhibit 33 to the Second Declaration of
Emmett E. Robinson**

(FILED UNDER SEAL)

Kalen A. Graham - March 11, 2020

<p style="text-align: right;">1</p> <p>1 SUPERIOR COURT OF CALIFORNIA</p> <p>2 COUNTY OF ORANGE</p> <p>3 INTENSE LIGHTING, LLC, a</p> <p>4 California limited liability company,</p> <p>5 Plaintiff,</p> <p>6 vs. CASE NO: 30-2018-00995279-CU-BC-JCJ</p> <p>7 ARCHITECTURAL BUSSTRUT CORPORATION,</p> <p>8 a Delaware Corporation; and</p> <p>9 DOES 1 through 20, inclusive,</p> <p>10 Defendants.</p> <p>11 and</p> <p>12 ARCHITECTURAL BUSSTRUT CORPORATION,</p> <p>13 a Delaware Corporation,</p> <p>14 Cross-Complainant,</p> <p>15 vs.</p> <p>16 LEVITON MANUFACTURING CO., INC.;</p> <p>17 CONSERVATION TECHNOLOGY OF ILLINOIS, LLC,</p> <p>18 d/b/a and a/k/a CONTECH LIGHTING;</p> <p>19 INTENSE LIGHTING, LLC; and</p> <p>20 DOES 1 through 20, inclusive,</p> <p>21 Cross-Defendants.</p> <p>22</p> <p>23 VIDEOTAPED DEPOSITION OF</p> <p>24 KALEN A. GRAHAM,</p> <p>25 Taken March 11, 2020</p> <p>Commencing at 10:05 a.m.</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF ARCHITECTURAL BUSSTRUT CORPORATION:</p> <p>3 Michael Kalis, Esq.</p> <p>4 LYNN PINKER COX & HURST, LLP</p> <p>5 2100 Ross Avenue, Suite 2700</p> <p>6 Dallas, Texas 75201</p> <p>7 214.981.3800</p> <p>8 mkalis@lynnllp.com</p> <p>9</p> <p>10 ON BEHALF OF LEVITON MANUFACTURING CO., INC.;</p> <p>11 CONSERVATION TECHNOLOGY OF ILLINOIS, LLC,</p> <p>12 d/b/a and a/k/a CONTECH LIGHTING; INTENSE LIGHTING, LLC:</p> <p>13 Joshua Kipnees, Esq.</p> <p>14 PATTERSON BELKNAP WEBB & TYLER, LLP</p> <p>15 1133 Avenue of the Americas</p> <p>16 New York NY 10036</p> <p>17 212.336.2000</p> <p>18 jkipnees@pbwt.com</p> <p>19</p> <p>20 ON BEHALF OF TARGET CORPORATION AND THE WITNESS:</p> <p>21 Matthew R. McBride, Esq.</p> <p>22 WINTHROP & WEINSTINE, P.A.</p> <p>23 Capella Tower</p> <p>24 225 South 6th Street</p> <p>25 Minneapolis, Minnesota 55402</p> <p>612.604.6400</p> <p>mmcbride@winthrop.com</p> <p>ALSO PRESENT:</p> <p>Greg Gellert</p> <p>Larry Gellert</p> <p>Jacob Arvold - Videographer</p>
<p style="text-align: right;">2</p> <p>1 Videotaped oral deposition of KALEN A. GRAHAM,</p> <p>2 taken March 11, 2020, commencing at 10:05 a.m., at the</p> <p>3 offices of Winthrop & Weinstine, P.A., Capella Tower,</p> <p>4 225 South 6th Street, Suite 3500, Minneapolis, Minnesota,</p> <p>5 before Dawn Workman Bounds, Certified Shorthand Reporter</p> <p>6 and Notary Public of and for the State of Minnesota.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 I N D E X</p> <p>2 WITNESS: KALEN A. GRAHAM PAGE</p> <p>3 EXAMINATION BY MR. KALIS..... 8</p> <p>4 EXAMINATION BY MR. KIPNEES..... 178</p> <p>5 EXAMINATION BY MR. KALIS..... 247</p> <p>6 EXAMINATION BY MR. KIPNEES..... 257</p> <p>7 EXAMINATION BY MR. KALIS..... 257</p> <p>8 MEDIA 1..... 7</p> <p>9 MEDIA 2..... 95</p> <p>10 MEDIA 3..... 178</p> <p>11 EXHIBITS MARKED/REFERRED TO</p> <p>12 No. 129: Graham LinkedIn Profile..... 10</p> <p>13 No. 130: 9/9/16 Gellert e-mail to Graham</p> <p>14 Highly Confidential, Bates BCA-0106420-24..... 21</p> <p>15</p> <p>16 No. 131: 9/19/16, Graham e-mail to Nickos</p> <p>17 Confidential, Bates BCA-0058394..... 28</p> <p>18 No. 132: Target's SAP Sourcing eSourcing</p> <p>19 Invitation to Participate, Confidential</p> <p>20 Bates BCA-0088485-88..... 37</p> <p>21 No. 133: Target LED Heavy Duty Track Light Fixture</p> <p>22 Specifications, Confidential, Bates INT00064913.... 44</p> <p>23</p> <p>24 No. 134: Target Property Development Pyramid</p> <p>25 Organizational Name Date Stage..... 59</p> <p>No. 135: 9/14/16 Emmer e-mail to Graham</p> <p>Confidential, Bates TAR-CASUBP000827..... 67</p> <p>No. 136: 11/2/16 Gellert e-mail to Graham</p> <p>Confidential, Bates BCA-0063129-30..... 71</p> <p>No. 137: 11/8/16 Graham e-mail to Trankel with</p> <p>attached Busstrut: Lighting Price Discussion</p> <p>November 3, 2016, Confidential, Bates TAR006568-75. 76</p>

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<p style="text-align: right;">17</p> <p>1 Q. -- in engineering?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. And who would those people be?</p> <p>4 A. Tom Monahan.</p> <p>5 Q. Okay.</p> <p>6 Who is Tom Monahan?</p> <p>7 A. He works for Doyle.</p> <p>8 Q. So he's -- he reports to Doyle?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And is all of this in the say 2016 to</p> <p>11 2020 time frame?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. What was -- or what is -- during that</p> <p>14 time frame, do you know what Doyle Trankel's title was?</p> <p>15 A. Director.</p> <p>16 Q. Okay. And what about Tom Monahan?</p> <p>17 A. I don't know his title.</p> <p>18 Q. Okay. All right. And I see that it looks like</p> <p>19 prior to Target you did some commercial real estate; is</p> <p>20 that right?</p> <p>21 A. Correct.</p> <p>22 Q. And was that right out of college?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And you went to St. Cloud State</p> <p>25 University?</p>	<p style="text-align: right;">19</p> <p>1 terms on Partners Online, and then setting up procurement</p> <p>2 through Ariba. I think how it's stated in the contract</p> <p>3 is an electrical payment process.</p> <p>4 Q. So you said there are terms, Partners Online?</p> <p>5 A. Correct.</p> <p>6 Q. What is that?</p> <p>7 A. It's our vendor portal. It's a broad vendor</p> <p>8 portal.</p> <p>9 Q. And so there are -- there are documents or some</p> <p>10 sort of application process that a potential supplier</p> <p>11 goes into and fills out, or what is that?</p> <p>12 A. I don't have direct knowledge of how the -- all</p> <p>13 the steps in Partners Online. There's a contract support</p> <p>14 team that manages that.</p> <p>15 Q. Would it be fair to say that this sort of</p> <p>16 prequalification process isn't a negotiation --</p> <p>17 A. No.</p> <p>18 Q. -- process?</p> <p>19 It's not fair to say that?</p> <p>20 A. It's -- it's not a negotiation process.</p> <p>21 Q. So I'm right; it's not a negotiation process?</p> <p>22 A. No.</p> <p>23 Q. I'm not right?</p> <p>24 A. It -- so it's -- it's -- the prequalification</p> <p>25 isn't a negotiation.</p>
<p style="text-align: right;">18</p> <p>1 A. Yes.</p> <p>2 Q. You graduated from there?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Was your degree a BS, finance</p> <p>5 management?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you have any graduate degrees?</p> <p>8 A. No.</p> <p>9 Q. Okay. And do you -- do you have any sort of</p> <p>10 professional licenses?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any electrical engineering</p> <p>13 background?</p> <p>14 A. No, none.</p> <p>15 Q. Okay. So I want to talk a little bit about</p> <p>16 what Target does when it's considering working with a</p> <p>17 supplier.</p> <p>18 Is there some sort of prequalification</p> <p>19 process that Target requires a potential supplier to go</p> <p>20 through?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And what is that prequalification</p> <p>23 process?</p> <p>24 A. Be signing our master agreement, which is a</p> <p>25 supplier qualification agreement in this case, signing</p>	<p style="text-align: right;">20</p> <p>1 Q. It is just these are the forms you have to sign</p> <p>2 if you want to --</p> <p>3 A. Correct.</p> <p>4 Q. -- end -- end up getting an agreement with us</p> <p>5 or supplying us?</p> <p>6 A. Uh-huh.</p> <p>7 Q. "Us" being Target?</p> <p>8 A. If there was disagreement in redlines within</p> <p>9 the supplier qualification agreement, we would -- we</p> <p>10 would discuss those.</p> <p>11 But when we set up an event and we're</p> <p>12 vetting suppliers, we require that suppliers sign our</p> <p>13 qualification agreement.</p> <p>14 Q. So what does "set up an event" mean?</p> <p>15 A. A sourcing event.</p> <p>16 So at a high level, Target has a business</p> <p>17 need --</p> <p>18 Q. Uh-huh.</p> <p>19 A. -- and we have a defined scope.</p> <p>20 And we would work to set up an RFI,</p> <p>21 request for information, or request for proposal with</p> <p>22 suppliers that we know that supply products in the</p> <p>23 category that we're interested in buying.</p> <p>24 And through that event, we would validate</p> <p>25 that suppliers have the product that we're looking for.</p>

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<p style="text-align: right;">61</p> <p>1 You can go ahead and answer.</p> <p>2 A. The contract is to secure pricing for a</p> <p>3 three-year period of time.</p> <p>4 Q. (By Mr. Kalis) Okay. I want to make sure we're</p> <p>5 not saying two different things.</p> <p>6 So you're asking here, you -- Target is</p> <p>7 asking here, what discount would you give to be awarded a</p> <p>8 three-year contract instead of the standard two,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And so the idea being that a two-year contract</p> <p>12 might have higher per yearly prices, but there might be a</p> <p>13 discount associated with those yearly prices if the</p> <p>14 contract was extended to three years, right?</p> <p>15 A. Yes.</p> <p>16 Q. And so don't you think that -- I mean, if -- if</p> <p>17 Target only purchased materials -- if this -- if Target</p> <p>18 only purchased materials from a supplier for one year,</p> <p>19 but -- but they entered into a three-year contract with</p> <p>20 reduced rates, I mean, don't you think it makes sense</p> <p>21 that Target -- that the supplier would have expected to</p> <p>22 be able to sell materials to Target over the course of</p> <p>23 three years?</p> <p>24 MR. McBRIDE: Object to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">63</p> <p>1 Q. So like if a -- if a -- if I reduce my rate on</p> <p>2 a yearly basis for an extra year of a contract, don't you</p> <p>3 think that I would be expecting you to continue</p> <p>4 purchasing from me over those three years?</p> <p>5 MR. McBRIDE: Objection, form of the</p> <p>6 question.</p> <p>7 You can go ahead and answer.</p> <p>8 A. I mean, I wouldn't -- I wouldn't state it that</p> <p>9 way. I'd say --</p> <p>10 Q. (By Mr. Kalis) How would you state it?</p> <p>11 A. I would say that we'd have a contract in place</p> <p>12 to purchase if we had a demand.</p> <p>13 Q. But there's no benefit to somebody who reduces</p> <p>14 their yearly price for an extra year if Target only buys</p> <p>15 from them for one year.</p> <p>16 You would agree with that, right?</p> <p>17 MR. McBRIDE: Object to the form of the</p> <p>18 question.</p> <p>19 You can go ahead and answer.</p> <p>20 A. There's a lot of factors involved in that, so</p> <p>21 no.</p> <p>22 I mean, some vendors could look at a</p> <p>23 three-year contract as risky because of commodity pricing</p> <p>24 and steel and other factors.</p> <p>25 Q. (By Mr. Kalis) I'm just talking from like a</p>
<p style="text-align: right;">62</p> <p>1 Go ahead and answer.</p> <p>2 A. I don't know how a supplier would interpret...</p> <p>3 Q. (By Mr. Kalis) Well, I mean, if Target</p> <p>4 was going -- excuse me.</p> <p>5 If a supplier was going to reduce its</p> <p>6 yearly rate, it would make sense that it would want some</p> <p>7 sort of assurance that Target would be buying over the</p> <p>8 course of the three years, right; otherwise Target would</p> <p>9 just be getting the benefit of a reduced rate for a</p> <p>10 shorter term?</p> <p>11 MR. McBRIDE: Object to the form of the</p> <p>12 question.</p> <p>13 Go ahead and answer.</p> <p>14 A. Our contracts are put in place to have pricing</p> <p>15 for a period of time. I can't speak to -- behind</p> <p>16 specific supplier motivation of how they adjust their</p> <p>17 price.</p> <p>18 Q. (By Mr. Kalis) Keep going.</p> <p>19 A. That -- that's my answer.</p> <p>20 Q. I'm just trying to work through like</p> <p>21 practically how this --</p> <p>22 A. Yeah.</p> <p>23 Q. -- makes sense from like an economic</p> <p>24 perspective.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">64</p> <p>1 total cost perspective and what you're getting over three</p> <p>2 years.</p> <p>3 I mean, if a supplier knew that Target was</p> <p>4 only going to buy from them for one year, they wouldn't</p> <p>5 further discount that price, right?</p> <p>6 MR. McBRIDE: Object to the form of the</p> <p>7 question.</p> <p>8 You can go ahead and answer.</p> <p>9 A. Yeah, I don't know how a supplier would respond</p> <p>10 to that.</p> <p>11 Q. (By Mr. Kalis) I'm not asking for a specific</p> <p>12 response to a supplier.</p> <p>13 You're asking -- Target is asking for</p> <p>14 discounted pricing over a three-year term, correct?</p> <p>15 A. Yes. We would want to validate -- again, this</p> <p>16 is an RFP, so we would want to validate and understand</p> <p>17 how the suppliers see the market.</p> <p>18 So we are simply asking, do you value a</p> <p>19 two-year agreement or three-year agreement? And I think</p> <p>20 if you'd state here in the response, that number's zero.</p> <p>21 Q. I'm not asking for what the response says.</p> <p>22 I'm just asking about that question and</p> <p>23 kind of thinking through the economics of a two-year</p> <p>24 versus three-year contract. Right?</p> <p>25 So if Target is entering a contract for</p>

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<p style="text-align: right;">81</p> <p>1 the Gellerts said to you about a two-year term versus a 2 three-year term. 3 A. I mean, I would -- I would recall specific 4 things, yes. 5 Q. Will you tell me what those specific things 6 are? 7 A. Well, it'd be agreement to pricing, 8 nonfinancials. 9 Yeah, it's a very broad question, so it's 10 hard to just -- 11 Q. It's not a broad -- what I'm asking is do you 12 remember any specifics about what the Gellerts told you 13 during a conversation about a two-year term versus 14 three-year term? 15 A. I don't recall any specifics, no. 16 Q. Okay. Do you recall any specifics about what 17 you shared with them about a two-year term versus 18 three-year term? 19 A. I mean, if you ask me a specific question, I 20 could answer; but I -- I couldn't state -- 21 Q. I don't know -- 22 A. -- specifics. 23 Q. -- what -- I wasn't at that meeting, so I don't 24 know what was specifically said or not. 25 A. Uh-huh. Understood.</p>	<p style="text-align: right;">83</p> <p>1 regarding financial conditions and nonfinancial. 2 Q. Who did the majority of the talking during this 3 November 10 meeting on Target's side? 4 A. I mean, there was conversation from busSTRUT. 5 There's conversation from myself, my manager Dan Markus, 6 and Doyle Trankel. 7 Q. So Dan Markus, you, and Doyle all contributed 8 during this meeting? 9 A. I led the meeting and led the speaking points. 10 And then we would leave the room, and they would come 11 with a response -- 12 Q. And -- 13 A. -- to our presentation. 14 Q. -- what was Doyle -- what was Doyle's role in 15 this meeting? 16 A. He would be -- he's the business owner, and 17 ultimately his organization would sign the contract. 18 Q. So again, I'm asking, do you remember any 19 specifics about what he contributed during this meeting? 20 And I don't want you to speculate. I'm 21 just trying to actually get -- 22 A. Yeah. 23 Q. -- an accurate -- 24 A. No, I can't -- no specifics, but it would have 25 been in line with the -- all of these points here.</p>
<p style="text-align: right;">82</p> <p>1 Q. I'm trying to get from you whether you remember 2 any specifics from that conversation. 3 And I'm entitled to that information, and 4 I don't want to be surprised at trial with about what the 5 specifics were of a conversation. 6 So I'm asking you, please share with me if 7 you remember any specifics from that conversation. 8 A. I can't recall specifics. 9 I mean, we discussed pricing. We 10 discussed capability. We discussed warranty. Everything 11 that's on this document are topics that we discussed. 12 Q. Okay. So actually this document does pretty 13 closely reflect what was discussed at the meeting even 14 though you said previously it was an internal draft? 15 A. So -- 16 Q. And actually -- 17 A. -- what you have in front of you is the 18 internal draft, yes. 19 Q. But you -- 20 A. But what I had stated is parts of this -- and I 21 can't recall if this is the specific slide that we 22 presented at the time during the meeting, but it would be 23 of this similar structure. 24 This was our internal planning document. 25 But the topics that we discussed would be</p>	<p style="text-align: right;">84</p> <p>1 Q. But you don't remember specifics, is what 2 you're saying, without speculating? 3 A. No. 4 Q. Okay. And does the same go for Dan Markus and 5 what his contributions were? 6 A. Yes. 7 Q. Now, busSTRUT did in fact win the heavy duty 8 track lighting program, correct? 9 MR. McBRIDE: Object to the form of the 10 question. 11 You can go ahead and answer. 12 A. We awarded a contract for pricing to purchase 13 their material, yes. 14 MR. KALIS: Objection, nonresponsive. 15 Q. (By Mr. Kalis) There was an RFP for track 16 lighting. BusSTRUT participated in the heavy duty track 17 category. 18 We've covered that, right? 19 A. Uh-huh. 20 Q. And that led to this November 10 meeting -- 21 November 10, 2016, meeting, correct? 22 And -- is that correct? 23 A. Correct. Yeah. 24 Q. And then the day after -- well, at the end of 25 that meeting, didn't you congratulate the Gellerts on</p>

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<p style="text-align: right;">89</p> <p>1 We'll get there, I promise you.</p> <p>2 Right now I'm just asking about: You said</p> <p>3 a recap of the agreement that was reached. And the recap</p> <p>4 shows that Target was awarding Bussway an LED Head</p> <p>5 Program for three years to busSTRUT, right?</p> <p>6 A. That's what it states, yes.</p> <p>7 Q. If it weren't true, you wouldn't have said</p> <p>8 "agreed"?</p> <p>9 A. And we wouldn't have entered a contractual</p> <p>10 agreement with amendment number 2, so yes.</p> <p>11 MR. KALIS: Objection, nonresponsive.</p> <p>12 Q. (By Mr. Kalis) Not my question.</p> <p>13 Again, we'll get there.</p> <p>14 A. I got you.</p> <p>15 Q. I promise, we'll get there.</p> <p>16 But your recap would not have said that</p> <p>17 the parties agreed to that if they actually hadn't agreed</p> <p>18 to that?</p> <p>19 A. My recap wouldn't state...</p> <p>20 Can you restate the question?</p> <p>21 Q. Yeah. Your recap that you sent -- here's the</p> <p>22 recap of the agreement we reached.</p> <p>23 You wouldn't have said, "agreed," next to</p> <p>24 "award Bussway an LED Head Program for 3 years" if that</p> <p>25 were not in fact what was agreed to, right?</p>	<p style="text-align: right;">91</p> <p>1 that we've been talking about, right, that busSTRUT won,</p> <p>2 right?</p> <p>3 MR. McBRIDE: Object to the form of the</p> <p>4 question.</p> <p>5 A. Yeah, restate your question.</p> <p>6 Q. (By Mr. Kalis) Yeah. I'm just talking about</p> <p>7 this RFP for the heavy duty track that we've been talking</p> <p>8 about. Okay?</p> <p>9 That's where I'm starting. Are we good?</p> <p>10 A. Yep.</p> <p>11 Q. And Target entered into this agreement that we</p> <p>12 have been talking about and that was later executed,</p> <p>13 which we'll get to, based off of busSTRUT's submissions</p> <p>14 in the RFP process, right?</p> <p>15 A. We -- we -- yes, selected them to move on to</p> <p>16 contracting, yes.</p> <p>17 Q. Okay. And for the heavy duty track, you were</p> <p>18 selecting busSTRUT and awarding it the Bussway and LED</p> <p>19 Head Program for three years, not some other supplier,</p> <p>20 right?</p> <p>21 A. We selected busSTRUT, yes.</p> <p>22 Q. So let's see if we can agree on this.</p> <p>23 Leading up to this point, wouldn't you say</p> <p>24 that everything that we've been talking about shows that</p> <p>25 Target and busSTRUT were negotiating for Target to</p>
<p style="text-align: right;">90</p> <p>1 A. It's a summary of our agreement, yes.</p> <p>2 Q. Right. And I'm not trying to like --</p> <p>3 A. Yeah.</p> <p>4 Q. -- pin you down on like an agreement versus</p> <p>5 this amendment.</p> <p>6 I'm just trying to make sure that you</p> <p>7 wouldn't have written that were it not true?</p> <p>8 MR. McBRIDE: Objection, form of the</p> <p>9 question.</p> <p>10 You can go ahead and answer again.</p> <p>11 Q. (By Mr. Kalis) I'm talking about the recap --</p> <p>12 the summary that you sent...</p> <p>13 A. I wouldn't have wrote it unless it was true.</p> <p>14 Q. Would you have written "agreed" next to this if</p> <p>15 Target had not actually agreed to that?</p> <p>16 A. As it states, we agreed on these terms, yes.</p> <p>17 Q. Okay. Now, this RFP process is not one where</p> <p>18 there were multiple companies that were -- that were</p> <p>19 selected or awarded business, right, for the heavy duty</p> <p>20 track?</p> <p>21 A. I mean, we selected suppliers for track</p> <p>22 lighting in general.</p> <p>23 Q. Not my question. I just want an answer to my</p> <p>24 question.</p> <p>25 The RFP process for the heavy duty track</p>	<p style="text-align: right;">92</p> <p>1 exclusively purchase heavy duty track from busSTRUT?</p> <p>2 A. No.</p> <p>3 MR. KIPNEES: Objection to the form.</p> <p>4 Q. (By Mr. Kalis) Okay. So we talked about</p> <p>5 multiple companies or multiple suppliers competing in the</p> <p>6 RFP process for heavy duty track, right?</p> <p>7 A. We did.</p> <p>8 Q. Okay. And we talked about how busSTRUT</p> <p>9 ultimately won that RFP process.</p> <p>10 As you can see in your recap here, they</p> <p>11 were awarded the Bussway and LED Head Program for three</p> <p>12 years, right?</p> <p>13 What it says there, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then busSTRUT ultimately agreed to</p> <p>16 lower its prices for an extra three-year -- third term,</p> <p>17 contract term, right?</p> <p>18 A. I don't recall what motivated them to drop</p> <p>19 their cost.</p> <p>20 Q. I'm not asking about what motivated them.</p> <p>21 I'm just saying it's a fact that the</p> <p>22 agreement that was ultimately reached and signed was for</p> <p>23 three years instead of two, right?</p> <p>24 A. That's what the amendment states, yes.</p> <p>25 Q. And then they actually, as part of that,</p>

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<p style="text-align: right;">93</p> <p>1 lowered their annual cost or price, right, for that third 2 term? 3 A. Again, I -- they lowered their price to enter 4 an agreement -- an amendment for the three years. 5 I don't know what motivated them... 6 Q. I'm not asking about their motiva -- 7 motivations. 8 It's just a fact that Target asked, will 9 you lower prices for the -- for an extra contract term, 10 and that's what ended up happening, right? 11 A. Deal points aren't linear. 12 I mean, it would be an agreement of all of 13 the terms. 14 MR. KALIS: Not my question. 15 Objection, nonresponsive. 16 A. Okay. 17 Q. (By Mr. Kalis) There was this discussion about 18 will it be a two-year term or a three-year term. It 19 ultimately ended up being a three-year term. 20 I think we're in agreement on that, 21 right? 22 A. Uh-huh. 23 Q. Okay. And busSTRUT's price over three years 24 was less than its price was over two years, right? 25 A. I don't recall how they moved through our</p>	<p style="text-align: right;">95</p> <p>1 Q. Okay. So you're not going to show up later and 2 try to argue otherwise because you don't recall, right? 3 A. No, I don't recall. 4 Q. Okay. Because if you recall, I'm entitled to 5 know that. I don't want to be surprised later. 6 So I'm just trying to get you to say 7 whether you know or not now. 8 A. Yeah, I don't. 9 Q. If you don't, that's fine. 10 A. I don't remember. 11 Q. Okay. 12 MR. KALIS: Is now a good breaking time? 13 THE VIDEOGRAPHER: This is good. 14 This is the end of media number 1 in the 15 deposition of Kalen Graham. We're off the record at 16 12:13 p.m. 17 (Recess 12:13-12:19.) 18 (Media 2.) 19 THE VIDEOGRAPHER: This is the beginning 20 of media number 2 in the deposition of Kalen Graham. 21 We're back on the record at 12:19. 22 Q. (By Mr. Kalis) Mr. Graham, tell me why you 23 don't think that the agreement with busSTRUT was 24 exclusive. 25 A. That word never came up in any discussions, and</p>
<p style="text-align: right;">94</p> <p>1 discussions. I recall -- 2 Q. So let me ask you this, then. 3 If we're able to show that its yearly 4 price was less over three years than two years, are you 5 going to dispute that? 6 MR. McBRIDE: Object to the form of the 7 question. 8 You can go ahead and answer. 9 A. I don't recall. 10 Q. (By Mr. Kalis) You don't have a way to dispute 11 that, really, is what you're saying? 12 A. Again, I don't know what -- 13 MR. McBRIDE: Object to the -- 14 A. -- what motivated -- 15 MR. McBRIDE: -- form of the question. 16 A. -- them to make a decision. 17 Q. (By Mr. Kalis) I'm not asking about their 18 motivations. 19 A. Yeah. 20 Q. I'm just asking about on a per-year term. 21 For three years the per-year cost was less 22 than it was over two years, right? 23 A. Again, I don't -- I don't recall. 24 I recall what was written into the 25 contract.</p>	<p style="text-align: right;">96</p> <p>1 there's nothing within our amendments that reflect 2 exclusivity. All the communications we sent around 3 quantities state "estimated." 4 Q. So if somebody at Target said Target negotiated 5 with busSTRUT to purchase thousands of feet of strut for 6 all of Target's stores, new and remodel, you're saying 7 you wouldn't agree with that? 8 MR. McBRIDE: Object to the form of the 9 question. 10 You can go ahead and answer. 11 A. They provided products for a subset of our 12 stores. "All" would be inaccurate. 13 Q. (By Mr. Kalis) Okay. And what are you basing 14 that on? 15 A. What am I basing that -- my answer on? 16 Q. Yeah. 17 A. Is that -- so we have different remodel 18 packages that we put into specific stores in different 19 markets. That would be, yeah, certain features or 20 products. 21 Q. Okay. So you're telling me if somebody at 22 Target said that busSTRUT and Target negotiated to 23 purchase -- for busSTRUT to purchase thousands of feet of 24 strut for all of Target's stores, new and remodeled, then 25 the person who said that is a liar?</p>

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<p style="text-align: right;">205</p> <p>1 Q. Okay. And Lux Beam is cheaper than busSTRUT's 2 system, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know by how much?</p> <p>5 A. I don't, no. I don't have the figures in front 6 of me.</p> <p>7 Q. But you know it was substantially cheaper, 8 correct?</p> <p>9 A. Yeah, I can't -- I don't have -- I don't have 10 the information. I can't recall by how much.</p> <p>11 But I do know we made the move because it 12 was a cost-effective move that would allow us to get in 13 line with our budgets.</p> <p>14 Q. Okay. So other than the relationship with 15 Villa, the engineering recommendation, and that this was 16 a cost-effective move, do you recall any other factors or 17 information that was considered in deciding to consider 18 Lux Beam as an alternative to the busSTRUT system?</p> <p>19 A. It would have been meeting the scope that 20 engineering required at that point in time.</p> <p>21 Q. And do you recall what that scope was?</p> <p>22 A. I do not, no.</p> <p>23 The scope conversations at that point 24 were, you know, handled between Villa and the engineering 25 team.</p>	<p style="text-align: right;">207</p> <p>1 final determination that it would be scaling down its 2 supply of busSTRUT and start using Lux Beam in parts of 3 the stores where busSTRUT's system had previously been 4 installed?</p> <p>5 A. We -- we were -- we were reviewing contingency 6 plans. I said that the decision was engineering's 7 decision.</p> <p>8 But the final determination occurred after 9 our second conversation with Greg and his father Larry 10 where we -- we opened up and -- to have a dialogue how to 11 move forward as an opening offer, I guess, which included 12 reducing the amount of locations that they would be in.</p> <p>13 And during that meeting, you know, we 14 received I would say verbal assaults and swear words and 15 cussing and telling us we can't do that to them, and we'd 16 be speaking to their attorney.</p> <p>17 So at that point in time, just based on 18 the friction on the call, I said, this is not a 19 productive conversation; and, you know, we'll -- we'll 20 end the call now.</p> <p>21 Q. Okay. So I think this was a call that took 22 place on April 9, 2018.</p> <p>23 Does that sound about right?</p> <p>24 A. I mean, it was in the springtime frame. I 25 don't recall the dates.</p>
<p style="text-align: right;">206</p> <p>1 Q. And just to be clear, the decision to consider 2 Lux Beam as an alternative to busSTRUT, that wasn't based 3 on a review of any sort of advertisement, was it?</p> <p>4 MR. KALIS: Objection, form.</p> <p>5 A. No, not that I know, no.</p> <p>6 Q. (By Mr. Kipnees) Okay. It wasn't based on a 7 review of any sort of trade journal that talked about Lux 8 Beam?</p> <p>9 MR. KALIS: Same objection.</p> <p>10 A. I -- I don't know, no. I don't know.</p> <p>11 Q. (By Mr. Kipnees) Okay. To your knowledge, no 12 one looked up the Contech website and looked up 13 information about Lux Beam in deciding to consider Lux 14 Beam as an alternative?</p> <p>15 A. I don't know the actions of the engineering 16 team and their evaluation.</p> <p>17 Q. Okay. But certainly you're not aware of any 18 advertisements that anyone in the engineering team 19 reviewed and decided to consider Lux Beam as an 20 alternative to busSTRUT's system, correct?</p> <p>21 A. No advertise -- no.</p> <p>22 Q. No, you don't know; or there are no 23 advertisement you're aware of?</p> <p>24 A. I don't know. I'm not aware of any.</p> <p>25 Q. And at what point in time did Target make a</p>	<p style="text-align: right;">208</p> <p>1 Q. All right. Let me try to show you something 2 that I'm hoping will help jog your memory. 3 (Exhibit No. 150 marked.)</p> <p>4 MR. KIPNEES: 150.</p> <p>5 MR. KALIS: What is this? 150?</p> <p>6 MR. KIPNEES: Yes.</p> <p>7 Q. (By Mr. Kipnees) So Mr. Graham, this is Exhibit 8 150. It looks like it's an invite for a Skype meeting on 9 April 9, 2018.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And it lists some of the items that 13 would be discussed on -- on that call. It says: Holding 14 this time for a conversation regarding PO history, design 15 changes, and future partnership.</p> <p>16 And then it lists a number of other items 17 as well.</p> <p>18 Target requests future orders, commit 19 process, and current inventory. Right?</p> <p>20 A. Yes.</p> <p>21 Q. Does this refresh your recollection of 22 whether -- the call that you just described where you and 23 others at Target were verbally assaulted, that it 24 occurred on April 9, 2018?</p> <p>25 MR. KALIS: Objection, form.</p>